IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 285 of 2001.

Judgement reserved on: .

Date of decision: 2.8.2007.

National Insurance Company Ltd. ….. Appellant.

Vs.

Smt. Dhurmapti & ors. …. Respondents.

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Ms. Madhu Sharma, Advocate vice Mr. Ashwani K. Sharma, Advocate.

For the Respondents : Mr. Raman Sethi, Advocate, for respondent No.1.

None for other respondents.

Kuldip Singh, Judge (Oral).

The insurer of scooter No. HP-26-0055 is in appeal against the award, dated 2.11.2000, passed by Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr in M.A.C. No. 31 of 1998. The parties are referred in the same manner, as in the impugned award.

2. The facts of the case are that Raj Kumar, aged 26 years was going on scooter No. HP-26-0055 from Badhal to Bhabanagar on 25.4.1998 as pillion rider. The scooter was owned by respondent

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Whether the reporters of the local papers may be allowed to see the Judgment?

No.6 Man Singh and on 25.4.1998 at the relevant time the scooter was being driven by respondent NO. 4 Biru Shishta. At Place Chaurah at about 7 p.m. on 25.4.1998, bus No. HP-42-0601 knocked down the scooter bearing No. HP-26-0055. As a result of impact of bus, Raj Kumar had sustained injuries and fell from the scooter. The bus was owned by respondents No. 1 and 2 and at the time of the accident was being driven rashly and negligently by respondent No.3 Ram Singh, driver. Raj Kumar was given treatment at referral hospital, Rampur, but keeping in view the seriousness of his injuries, he was shifted from Rampur to Shimla, but he died on the way at place Nogli. An FIR No. 19/98, under Sections 279, 304-A, IPC, was registered at Police Station, Bhabanagar, District Kinnaur. The deceased was earning Rs. 10,000/- per month and petitioner is the mother of deceased Raj Kumar and was dependant on him, she claimed Rs. 7,00,000/- compensation on account of death of her son Raj Kumar.

3. The respondents No. 1 to 3 contested the petition and admitted the ownership of the bus. They have denied that accident took place due to rash and negligent driving on the part of the driver of the bus. The respondent No.4 was driving the scooter rashly and negligently with the result that Raj Kumar, pillion rider had a fall from the scooter. The bus had not hit the scooter. It has been denied that petitioner was dependant on deceased Raj Kumar. The age, income of the deceased was denied for want of knowledge.

4. The respondent No.5 insurer of scooter contested the petition and expressed ignorance about the accident and the death of

Raj Kumar in the accident. It has been alleged that respondent No.4 was not holding valid and effective driving licence at the time of accident. The scooter was being driven by respondent No. 4 in violation of terms and conditions of the insurance policy, as such respondent No. 5 was not liable to indemnify respondent No. 6, owner of the scooter.

5. The respondents No. 4 and 6 admitted the ownership of scooter No. HP-26-0055 of respondent No. 6. It has also been admitted that at the relevant time respondent No. 4 was driving this scooter from Badhal to Bhabanagar, but it has been submitted that respondent No. 4 was driving the scooter with due care and caution. It has also been admitted that Raj Kumar was accompanying respondent No. 4 on pillion at the time of accident. According to respondents No. 4 and 6, accident took place due to rash and negligent driving of the bus by its driver. They have admitted that Raj Kumar died due to the injuries sustained by him in the accident. The responsibility for the accident lay with respondent No. 3. Scooter No. HP-26-0055 was comprehensively insured with respondent No. 5 and compensation, if any, was payable by respondent No.5.

6. The Tribunal has returned the finding that accident took place due to rash and negligent driving on the part of respondents No. 3 and 4 and they were equally responsible for the accident. It has also been held that Raj Kumar, pillion rider had died due to the injuries sustained by him in the accident. The tribunal has awarded Rs. 1,15,200/- to the petitioner as compensation, to be paid by respondents No. 1 to 4 and 6. The respondents No. 1 to 3 were

directed to deposit Rs. 57,600/- within two months, failing which they shall be liable to pay simple interest at the rate of 12% per annum from the date of sward till realization. The respondents No. 4 and 6, were also directed to deposit Rs. 57,600/- with the Tribunal within two months from the date of the award, failing which they shall be liable to pay simple interest at the rate of 12% per annum from the date of the award till realization.

7. The insurer is in appeal to the extent the Tribunal has fixed the liability on the insurer in the impugned award.

8. I have heard the learned counsel for the parties and gone through the record. In the grounds of appeal, the insurer has submitted that driver of scooter was holding learner's licence Ex. RW 2/A at the time of accident. Nobody was accompanying respondent No. 4 at the time of accident, who was conversant with driving. There is violation of terms and conditions of insurance policy of the scooter and, therefore, the Tribunal has erred in fixing liability on the insurer. Ms. Madhu Sharma, Advocate appearing vice counsel for the appellant-Insurance company has submitted that the Tribunal has awarded interest at higher rate of 12% per annum.

9. Learned counsel for the petitioner has submitted that in the reply of insurer, no plea has been taken that the person who was driving scooter at the time of the accident was holding learner's driving licence and was not accompanied with a person who was conversant with the driving. He has submitted that a person holding a learner's driving licence would come within the purview of duly licenced and for this submission he has relied on **National Insurance**

Co. Ltd. Vs. Swaran Singh and others [2004 ACJ 1]. He has further submitted that the insurer cannot challenge the quantum of compensation including interest awarded by the Tribunal.

10. The driving licence of respondent No.4 is Ex. RW 2/A, which is learner licence w.e.f. 1.1.1998 to 30.6.1998 for driving motor cycle with gear. The violation of the licence is to be proved by the insurer. As per Rule 3 of Central Motor Vehicles Rules, 1989, the holder of learner's licence is to be accompanied by an instructor holding an effective driving licence to drive the vehicle. The insurer has not taken any plea in the reply that respondent No. 4 who was driving the scooter at the relevant time was not accompanied with a person or an instructor holding an effective driving licence to drive the scooter. Moreover, the Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Swaran Singh and others** (supra) in para 86 of the judgement has held that it cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of section 149(2) of the Act.

11. In view of the law laid down by the Hon'ble Apex Court, no fault can be found with the driving licence Ex. RW 2/A of respondent No. 5 and insurer cannot be exonerated its liability. The insurer has not proved any violation of the policy nor it has proved any statutory defence.

12. The submission of the learned counsel for the insurer that the Tribunal has awarded interest at higher rate is not available

to the insurer. The insurer cannot challenge the award on quantum. The 12% interest per annum awarded by learned Tribunal is otherwise conditional. The learned counsel for the insurer has failed to make out any case for interference.

13. The result of the above discussion the appeal is dismissed with no order as to costs.

August 2, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**